

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

*In re: Nexium (Esomeprazole Magnesium)
Antitrust Litigation*

MDL No. 2409

Civil Action No. 1:12-md-02409-WGY

This Document Relates to:

All Direct Purchaser Actions

*Walgreen Co., et al. v. AstraZeneca AB, et al.,
No. 13-cv-10337 (WGY)*

*Giant Eagle, Inc. v. AstraZeneca LP, et al.,
No. 13-cv-11305 (WGY)*

*Rite Aid Corp., et al. v. AstraZeneca AB, et al.,
No. 13-cv-12074 (WGY)*

**ASTRAZENECA DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AGAINST
DIRECT PURCHASER PLAINTIFFS FOR LACK OF ACTUAL INJURY AND TO
EXCLUDE DIRECT PURCHASER PLAINTIFFS' EXPERTS' DAMAGES OPINIONS**

Pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56.1, Defendants AstraZeneca LP, AstraZeneca AB, and Aktiebolaget Hassle (collectively, "AstraZeneca") hereby move for summary judgment on the Direct Purchasers' Consolidated Amended Complaint and Demand for Jury Trial [Dkt. No. 131] and the Amended Complaint and Demand for Jury Trial filed by each of the Retailer Plaintiffs¹ [Dkt. Nos. 515, 516, 517] (collectively, the "Direct Purchasers"). For the reasons set forth in the accompanying memorandum, the Court should grant summary judgment in AstraZeneca's favor because none of the Direct Purchasers has evidence that it suffered an actual injury, as the Constitution and the Clayton's Act require. In addition, the proposed expert testimony of Raymond Hartman and Keith Leffler relating to

¹ Walgreen Co., The Kroger Co., Safeway Inc., Supervalu Inc. and HEB Grocery Company LP; Rite Aid Corp., Rite Aid Hdqtrs. Corp., JCG (PJC) USA, LLC, Maxi Drug, Inc. d/b/a Brooks Pharmacy and Eckerd Corporation; and Giant Eagle, Inc.

damages should be excluded pursuant to Federal Rules of Civil Procedure 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

WHEREFORE, the AstraZeneca Defendants respectfully request that this Court (1) enter summary judgment in AstraZeneca's favor on the Direct Purchasers' Consolidated Amended Complaint and Demand for Jury Trial; and (2) exclude expert testimony from Drs. Hartman and Leffler relating to damages.

REQUEST FOR ORAL ARGUMENT

Pursuant to the Court's Order [Dkt. No. 494], AstraZeneca respectfully requests that the Motion be set for argument on January 21, 2014.

Dated: December 10, 2013

Respectfully submitted,

/s/ Dane H. Butswinkas

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AB, and Aktiebolaget Hassle*

LOCAL RULE 7.1 CERTIFICATE

Pursuant to Local Rule 7.1, I hereby certify that counsel for Defendants conferred with counsel for Plaintiffs, who do not assent to the relief requested herein.

/s/ Dane H. Butswinkas
Dane H. Butswinkas

CERTIFICATE OF SERVICE

I, James H. Weingarten, hereby certify that this document was electronically filed and served using the Court's ECF system on December 10, 2013.

/s/ James H. Weingarten
James H. Weingarten